

Signed at Washington, DC, this 20th day of January 1995.

Jospeh A. Dear,

Assistant Secretary of Labor.

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DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 241

Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final amended rule.

SUMMARY: This document presents the final rule partially implementing section 103(m) of Public Law 99-662, 33 U.S.C. 2213, which directs the Secretary of the Army to reduce the non-Federal cost-share of flood control and agricultural water supply projects under an "ability to pay" determination. This amended rule applies only to flood control projects. Guidelines for agricultural water supply projects have not been promulgated.

EFFECTIVE DATE: January 26, 1995.

ADDRESSES: Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Donald L. Barnes (202) 272-0120.

SUPPLEMENTARY INFORMATION: A final rule for flood control projects implementing Section 103(m) of Public Law 99-662, 33 U.S.C., was published in the **Federal Register** (54 FR 40578), October 2, 1989. A proposed amended rule was published in the **Federal Register** (59 FR 32670), June 24, 1994, allowing 60 days for review and comment. The proposed amended rule was in accord with the discretionary language contained in Section 201 of Public Law 102-580. The single response to the request for comments indicated support for an amended rule.

The final amended rule modifies the ability to pay determination for flood control projects to establish an eligibility for reductions in the non-Federal cost share using high cost criteria. Under this amended rule, when the normal non-Federal share is high (i.e., exceeding 35 percent) and when the normal per capita non-Federal cost of Construction exceeds \$300, adjustments can be made to the standard non-Federal share based on

these high cost considerations. Specifically, when both criteria are exceeded, the non-Federal share under the ability to pay provision will be either the requirement for lands, easements, rights-of-way, relocations, and disposal areas (LERRD's, i.e., no cash requirement) or 35 percent of the total project cost, whichever is greater. If LERRD's exceed 50 percent, the non-Federal share remains at 50 percent. This additional procedure does not change the benefits and income tests of the existing rule. Projects which would qualify for a reduction under the existing final rule, will receive a reduction from the high cost criteria, only if it provides a greater reduction than available under the benefits and income tests.

Periodic updating of the non-Federal per capita cost of construction will be accomplished and distributed to HQUSACE and to the field as soon as new data are available.

Background

In accordance with direction prescribed by Section 201 of the Water Resources Development Act of 1992, the Department of the Army conducted a study of the current ability to pay regulations for flood control projects. This study found, that while non-Federal cost shares for most structural flood control projects were less than 35 percent, in some cases (16 percent of the projects in a sample group studied), the non-Federal shares exceeded 35 percent, due to the high cost for LERRD. In addition, while for a majority of projects the non-Federal per capita cost of construction (total non-Federal share of construction costs divided by the population included within the geographic jurisdiction of the non-Federal project sponsor) was less than \$300, a significant number (34 percent of the sample studies) had per capita non-Federal costs that exceeded that amount. Given these circumstances, we concluded that there should be an adjustment in the normal non-Federal cost share based upon the high cost criteria.

The single response to the proposed amended rule was fully supportive of the recommended procedure for projects with high non-Federal cost shares.

Executive Order 12866 and Regulatory Flexibility Act

This rule is not a major rule within the meaning of Executive Order 12866, because it is not likely to result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Pursuant to 5 U.S.C. Section 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Furthermore, the number of entities affected by this rule is small, and it imposes few, if any, administrative burdens of any sort on small entities.

List of Subjects in 33 CFR Part 241

Community facilities, Flood control, Intergovernmental relations, Water resources.

For purposes set out in the preamble, 33 CFR Part 241 is amended as follows:

PART 241—FLOOD CONTROL AND COST SHARING REQUIREMENTS UNDER THE ABILITY TO PAY PROVISION

1. The authority for part 241 is revised to read as follows:

Authority: Sec. 103(m), Pub. L. 99-662, 100 Stat. 4082 (33 U.S.C. 2201 et seq.), as amended by Sec. 201, Pub. L. 102-580, 106 Stat. 4797 (33 U.S.C. 2201 et seq.)

2. Sections 241.1 through 241.3 are revised to read as follows:

§ 241.1 Purpose.

This rule gives general instructions on the implementation of section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, as amended by section 201 of the Water Resources Development Act of 1992, Public Law 102-588, for application to flood control projects.

§ 241.2 Applicability.

This rule applies to all U.S. Army Corps of Engineers Headquarters (HQUSACE), elements and Major Subordinate Commands and District Commands of the Corps of Engineers having Civil Works Responsibilities.

§ 241.3 References.

References cited in paragraphs (f) through (i) may be obtained from USACE Pub. Depot, CEIM-SP-D, 2803, 52d Avenue, Hyattsville, MD 20781-1102. References cited in paragraphs (d) and (e) may be obtained from the National Information Services, 5285 Port Royal Road, Springfield, VA 22161. References (a), (b) and (c) may be reviewed in your local library or by writing your local Congressman.

(a) Water Resources Development Act, 1986, Public Law 99-662, 100 Stat. 4082, 33 U.S.C. 2201 et seq.

(b) Water Resources Development Act 1992, Public Law 102-580, 106 Stat. 4797, 33 U.S.C. 2201 et seq.

(c) U.S. Water Resources Council, Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies, March 10, 1983.

(d) Office of Personnel Management, FPM Bulletin 591-30.

(e) Office of Personnel Management, FPM 591-32.

(f) U.S. Army Corps of Engineers, Engineer Regulation 1165-2-29.

(g) U.S. Army Corps of Engineers, Engineer Regulation 1165-2-121.

(h) U.S. Army Corps of Engineers, Engineer Regulation 1165-2-131.

(i) U.S. Army Corps of Engineers, Engineer Regulation 405-1-12.

3. Section 241.5 is amended by adding paragraph (d):

§ 241.5 Procedures for estimating the Alternative Cost Share.

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(d) Additional consideration for high cost projects. For any project where the normal non-Federal share exceeds 35 percent, and the per capita non-Federal cost (i.e., normal non-Federal share of total construction costs divided by the population in the sponsor's geographic jurisdiction) exceeds \$300, the non-Federal share under the ability to pay provision will be either LERRD's (i.e., no cash requirement) or 35 percent, whichever is greater. If LERRD's exceed 50 percent, the non-Federal share remains at 50 percent. Projects which qualify under the benefits and income tests will receive the reduction under the high cost criteria only if the high cost criteria results in a greater reduction in the non-Federal cost share.

§ 241.6 [Amended]

4. In § 241.6(a), the abbreviation "LCA" is revised to read "PCA".

5. In § 241.7, the terms "Local Cooperation Agreement" and "LCA" are revised to read "Project Cooperation Agreement" and "PCA" respectively. In addition, this section is amended by revising paragraph (c)(2), and the first sentence of paragraph (e)(2) as follows:

§ 241.7 Application of test.

* * * * *

(c) * * *

(2) An exhibit attached to the Project Cooperation Agreement (PCA) will include the Benefits Based Floor (BBF) determined in § 241.5(a): the Eligibility Factor (EF) determined in § 241.5(b): If the Eligibility Factor is greater than zero

but less than one, the estimated standard non-Federal share; the formula used in determining the ability to pay share as described in § 241.5(c)(1) through (c)(4); and a display of the non-Federal cost share under the high cost criteria described in § 241.5(d).

* * * * *

(e) * * *

(2) The non-Federal sponsor will be required to provide a cash payment equal to the minimum of five percent of estimated project costs, regardless of the outcome of the ability to pay test, unless any or all of the five percent cash requirement is waived by application of the high cost criteria described in § 241.5(d). * * *

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Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95-1733 Filed 1-25-95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC 11-1-6741; FRL-5137-2]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the District of Columbia. This revision establishes and requires the implementation of an oxygenated gasoline program in the District of Columbia. The intended effect of this action is to approve, in a limited fashion, those subsections of the District of Columbia Municipal Regulations (DCMR) which pertain to oxygenated gasoline. It is also the effect of this action to disapprove, in a limited fashion, those subsections of the DCMR which pertain to oxygenated gasoline. This action is being taken under section 110 of the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule will become effective on February 27, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and

Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Ave, SE., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Mrs. Kelly L. Bunker, (215) 597-4554.

SUPPLEMENTARY INFORMATION: On July 5, 1994 (59 FR 34401), EPA published a notice of proposed rulemaking (NPR) for the District of Columbia. The NPR proposed limited approval/limited disapproval of the District of Columbia's oxygenated gasoline regulation. The formal SIP revision was submitted by the District of Columbia's Department of Consumer and Regulatory Affairs on October 27, 1993.

The District of Columbia had submitted an oxygenated gasoline SIP on January 7, 1993. However, on July 6, 1993 EPA deemed the SIP incomplete due to the fact that the regulations were emergency and had an expiration of April 6, 1993 and because the SIP was submitted to EPA by an unauthorized authority. This incompleteness determination started the 18 month sanctions clock and the 24 month Federal implementation plan (FIP) clock. The October 27, 1993 oxygenated gasoline SIP submittal, which is the subject of this rulemaking action, stopped the 18 month sanctions clock but did not stop the 24 month FIP clock.

Other specific requirements of the District of Columbia's oxygenated gasoline regulation and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving those subsections of 20 DCMR which pertain to oxygenated gasoline as a revision to the District of Columbia SIP. Those subsections of 20 DCMR include chapter 1, section 199 definitions for the terms blending plant, distributor, non-oxygenated gasoline, oxygenate, oxygenated gasoline, oxygenated gasoline control period, oxygenated gasoline control area, refiner, refinery, retailer, retail outlet, terminal, wholesale purchaser-consumer; chapter 5, section 500, subsections 500.4 and 500.5; chapter 5, section 502, subsection 502.18; chapter 9, section 904, subsections 904.1 and 904.2. EPA is also disapproving those subsections of 20 DCMR which pertain to oxygenated gasoline for the limited purpose of allowing the District of Columbia the opportunity to correct the deficiencies previously identified by EPA in the NPR. The deficiencies